APPENDIX A

171 NLRB No. 143

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

Cases Nos. 16-RC-4660
16-RC-4661

GROENDYKE TRANSPORT, INC.

Employer

SOUTHERN CONFERENCE OF TEAMSTERS, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and HELPERS OF AMERICA

Petitioner

Decision and Direction of Elections

Upon petitions filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Charles H. Steere, Hearing Officer. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 16, this case was transferred to the National Labor Relations Board for decision. Briefs have been timely filed by the Employer[1] and the Petitioner. A reply brief was also filed by the Employer.

[1] As the record, including the briefs, adequately set forth the issues and positions of the parties, the Employer's request for oral argument is denied.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.[2]

Upon the entire record in these cases, including the briefs filed herein, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.

2. The Petitioner claims to represent certain employees of the Employer, and is a labor organization within the meaning of Section 2(5) of the Act.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. Petitioner seeks to represent a regional unit of drivers and owner drivers employed by the Employer at its terminals located in Texas, Oklahoma,

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[2] The Employer has filed a motion requesting a re-hearing on the Hearing Officer's ruling revoking a subpoena duces tecum issued by the Regional Director for Region 16 on September 6, 1967. For the reasons stated at the hearing by the Hearing Officer, the Employer's motion is denied.

and Louisiana.[3] In the alternative, the Petitioner seeks to represent separate units of drivers and owner drivers employed by the Employer at each of the terminals located in these same states. The Employer contends that the only unit appropriate for bargaining is a system-wide unit. There is no history of collective bargaining at any of the terminals involved herein.

The Employer is engaged as a motor common carrier in the transportation of petroleum, petroleum products, and other commodities. There are 26 terminals located in Colorado, New Mexico, Kansas, Oklahoma, Texas, and Louisiana. Trucks are dispatched into the various states and any one terminal may dispatch into any of the states. Drivers call in to the central dispatch center at the home office in Enid, Oklahoma, at the end of trips in order to return with loads to their home terminals.

The terminals are widely scattered geographically and operate under the central control of the home office. All terminals handle intrastate and interstate business. Local terminals receive

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[3] In Case No. 16-RC-4660, the Petitioner requested all terminals located in Texas, and in Case No. 16-RC-4661, the Petitioner requested all terminals located in Oklahoma. The Texas terminals are located at Amarillo, Angleton, Beaumont, Corpus Christi, Dallas, Gainesville, Houston, and Wichita Falls. The Oklahoma terminals are located at Ardmore, Duncan, Enid, Oklahoma City, Ponca City, and Tulsa. During the course of the hearing, it was ascertained that the Employer had opened a terminal at Baton Rouge, Louisiana. This terminal was manned by transfers and by local hiring. The Petitioner amended its position at the hearing to include the Baton Rouge terminal as one of the terminals for which it is seeking representation.

and dispatch orders depending upon the commodities involved. After the original allocation of business is made by the home office, the local terminals deal directly with customers. Meetings of terminal managers and dispatchers throughout the system are held periodically at the home office.

The terminal managers who are directly responsible to the home office, exercise a considerable amount of autonomy in handling day-to-day operations. Work rules, which vary from terminal to terminal, are established by terminal managers. Discipline, including discharge for reasons other than specific violations of company rules, is made by terminal managers subject to later check by the home office. Terminal managers make effective recommendations regarding personnel and responsibly direct the operations of the terminals. Grievances are settled at the local terminal and, although the employees have the right of appeal to the home office, most matters are resolved at the terminal level. In short, the terminal manager is the Employer's coordinator for all the functions performed by the Employer within that particular area.

Wages vary from terminal to terminal based on local economic conditions and competition with other employers for similar personnel. Separate wage adjustments have been made applicable to individual terminals. Record testimony reflects

about seven transfers from terminal to terminal during a period of 3½ years.

In support of its request for a regional unit, the Petitioner contends that such a unit would be consistent with industry pattern and practice. The record, however, fails to establish a uniform pattern and practice of regional bargaining in this industry, and it is clear that the proposed unit possesses neither geographic nor administrative cohesiveness. Thus, the sole basis for the regional unit appears to be the extent of the Petitioner's jurisdiction, a factor to which the Board does not give effect in determining what constitutes an appropriate unit.[4] Accordingly, we find that the regional unit sought herein is not appropriate.

Although it appears that there are factors present herein which could support a finding that a system-wide unit is appropriate, these factors are not so compelling as to require a finding that such a unit is the only appropriate unit. Single terminal units avoid the problem of wide geographical separation, and correspond with the Employer's only operational subdivisions, since there are no intermediate levels of authority between the individual terminals and the home office. The terminal managers are directly responsible to the home office, and the record shows that they have substantial authority in hiring, assigning, and disciplining drivers and in controlling the day-to-day work of

[4] *Building Construction Employers Association*, 147 NLRB 222, 224.

the drivers. The record also shows that separate wage adjustments have been made applicable to individual terminals and that there is a minimal amount of transfers between terminals.

On the basis of the foregoing, the single terminal units involved herein are presumptively appropriate for the purposes of collective bargaining.[5] Accordingly, we find that the single terminal units located in Texas, Oklahoma, and Louisiana are appropriate.[6]

The parties agree that drivers and owner drivers belong in the unit. However, contrary to the Petitioner, the Employer would also include the following:

Dispatchers: The dispatchers are under the direct control of the home office as are the terminal managers. They receive orders from customers and at the direction of central dispatch in the home office. They order the drivers when to leave on a particular schedule and to wait for a particular time. They select drivers who are to take particular loads. They reprimand drivers for tardiness. On these facts, we find that the dispatchers responsibly direct the work of the drivers, and we exclude them from the unit.[7]

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[5] *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631; *Frederickson Motor Express Corp.*, 121 NLRB 32, 33-34; and *Groendyke Transport, Inc.*, 164 NLRB No. 28.

[6] As we have found single terminal units appropriate herein, the Regional Director is instructed not to proceed with an election in any of the terminal units until he determines that the Petitioner has made an adequate showing of interest among the employees employed at that terminal.

[7] *Overnite Transportation Company*, 128 NLRB 723, 724.

Mechanics, servicemen: The employees performing these jobs have skills and interests substantially different from those of the drivers and owner drivers included in the unit sought by the Petitioner; we shall therefore exclude them from the unit.[8]

Clericals: The employees in these jobs perform various types of office work. As it is clear that they are office clericals who lack a community of interest with the drivers, we shall exclude them from the unit.[9]

Part-time drivers, part-time owner drivers: As the record does not show whether these classifications of employees are employed on a regular part-time basis or are employed as casual employees, we shall permit them to vote subject to challenge.

In view of the foregoing, we find that the following employees of the Employer constitute separate appropriate units for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All drivers, owner drivers, regular part-time drivers, regular part-time owner drivers employed at each of the Employer's terminals located in Texas, Oklahoma, and Louisiana, but excluding all

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[8] *Chemical Express,* 117 NLRB 29, 30-31.

[9] *Standard Trucking Company,* 122 NLRB 761, 763.

terminal managers, dispatchers, mechanics, servicemen, office clericals, casual part-time drivers, casual part-time owner drivers, all other employees, guards and supervisors as defined in the Act.

Direction of Elections

Elections by secret ballot shall be conducted among the employees in the units described above, as early as possible, but not later than 30 days from the date below. The Regional Director for Region 16 shall direct and supervise the elections, subject to the National Labor Relations Board Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in a strike which commenced

more than 12 months before the election date and who have been permanently replaced.[10] Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Southern Conference of Teamsters, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Dated, Washington, D. C.

June 5, 1968

Gerald A. Brown, Member

Howard Jenkins, Jr., Member

Sam Zagoria, Member

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[10] Election eligibility lists, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 16 within 7 days after the date of this Decision and Direction of Elections. The Regional Director shall make the lists available to all parties to the respective elections. No extension of time to file these lists shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement as to any election shall be grounds for setting aside that election whenever proper objections are filed. *Excelsior Underwear, Inc.*, 156 NLRB 1236.

APPENDIX B

Portions of the National Labor Relations Act:

§11(1); 29 U.S.C. §161(1)

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpena does not describe with sufficient particularity the evidence whose production is required . . .

§11(2); 29 U.S.C. §161(2)

(2) In case of contumacy or refusal to obey a

subpena issued to any person, any district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue such person an order requiring such person to appear before the Board, its members, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

APPENDIX C

Portions of Rules and Regulations of National Labor Relations Board, Series 8, as amended:

§102.66(c):

(c) Any party may file applications for subpenas in writing with the regional director if made prior to hearing, or with the hearing officer if made at the hearing. Applications for subpenas may be made *ex parte*. The regional director or the hearing officer, as the case may be, shall forthwith grant the subpenas requested. Any person served with a subpena, whether *ad testificandum* or *duces tecum*, if he does not intend to comply with the subpena, shall, within 5 days after the date of service of the subpena, petition in writing to revoke the subpena. Such petition shall be filed with the regional director who may either rule upon it or refer it for ruling to the hearing officer: *Provided, however,* That if the evidence called for is to be produced at a hearing and the hearing has opened, the petition to revoke shall be filed with the hearing officer. Notice of the filing of petitions to revoke shall be promptly given by the regional director or hearing officer, as the case may be, to the party at whose request the subpena was issued. The regional director or the hearing officer, as the case may be, shall revoke the subpena if, in his opinion, the evidence whose production is required does not relate to any matter under investigation

or in question in the proceedings or the subpena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpena is otherwise invalid. The regional director or the hearing officer, as the case may be, shall make a simple statement of procedural or other grounds for his ruling. The petition to revoke, any answer filed thereto, and any ruling thereon shall not become part of the record except upon the request of the party aggrieved by the ruling. Persons compelled to submit data or evidence are entitled to retain or, on payment of lawfully prescribed costs, to procure copies or transcripts of the data or evidence submitted by them.